

Chapter 1

Connecticut's Appellate Court System

1-1 INTRODUCTORY NOTE

1-1:1 Historical Background

1-1:1.1 Courts of Last Resort

Before 1784, the General Assembly exercised both trial and appellate judicial functions.¹ In 1784, the General Assembly created the Supreme Court of Errors, designating it the appellate court of last resort.² Under the Connecticut Constitution of 1818, the state's judicial and legislative functions were separated; the General Assembly was granted only legislative powers and the Supreme Court of Errors was expressly re-established as a constitutional court of last resort for all questions of state law.³

In 1819, the General Assembly passed legislation implementing the Constitution of 1818, which granted the Supreme Court of Errors exclusive jurisdiction over all appeals from any final

¹ D. Loomis and J. Calhoun, *The Judicial and Civil History of Connecticut*, 100-12 (1895).

² Preface to 1 Conn. xx; D. Loomis and J. Calhoun, *The Judicial and Civil History of Connecticut*, 133 (1895). From 1784 to 1818, the General Assembly retained judicial functions but exercised only limited trial jurisdiction, which it shared with the Superior Court. Those limited cases tried before the General Assembly had no right of appeal, thereby making the General Assembly de facto a court of last resort. D. Loomis and J. Calhoun, *The Judicial and Civil History of Connecticut*, 133 (1895).

³ Conn. Const. of 1818, art. V, §§ 1, 5.

judgment of the Superior Court.⁴ Between 1819 and 1965, the Supreme Court of Errors remained essentially unchanged in composition and powers. The 1965 Constitution shortened the court's name from the Supreme Court of Errors to simply the Supreme Court.⁵

1-1:1.2 Intermediate Appellate Courts

From its creation by statute in 1811 until 1855, the Superior Court was an intermediate appellate court, reviewing cases that were not reserved to the appellate jurisdiction of the General Assembly or the Supreme Court of Errors.⁶ Under the Constitution of 1818, the Superior Court was re-established as a constitutional court,⁷ and in 1855, the General Assembly abolished the County Court and transferred its trial jurisdiction to the Superior Court.⁸ Since 1855, the Superior Court has been the state's principal court of original jurisdiction. From 1855 to 1959, the Superior Court retained only minor appellate jurisdiction, namely appeals from state agencies and *de novo* appeals from town courts and probate courts.⁹

Between 1870 and 1883, the General Assembly created the county-level Courts of Common Pleas to hear cases that the Superior Courts could not accommodate because of their crowded dockets.¹⁰ The Courts of Common Pleas initially were granted appellate jurisdiction over civil cases decided by justices of the peace.¹¹ Three Courts of Common Pleas were subsequently granted criminal appellate jurisdiction over cases decided by trial justices

⁴ D. Loomis and J. Calhoun, *The Judicial and Civil History of Connecticut*, 134 (1895).

⁵ Conn. Const. of 1965, art. V, § 1. For a discussion of the significance of the name change, *see* § 7.5 n.4.

⁶ D. Loomis and J. Calhoun, *The Judicial and Civil History of Connecticut*, 131 (1895).

⁷ Conn. Const. of 1818, art. V, § 1.

⁸ *Administration of Justice in Connecticut*, 1963 Inst. of Public Serv., Univ. of Conn. 25 (I.R. Davis ed.).

⁹ *See* S. Bysiewicz, *Sources of Connecticut Law*, 36-39 (1987).

¹⁰ Courts of Common Pleas were created in Hartford and New Haven counties by 1869 Conn. Pub. Acts, Ch. XCIII; in Fairfield and New London counties by 1870 Conn. Pub. Acts, Chs. XXII & LXXXVII; in Litchfield County by 1883 Conn. Pub. Acts, Ch. X. Litchfield had been served by a district court established in 1872. Waterbury remained outside the county system of Courts of Common Pleas, and its district court, established in 1881, was administered by the Judicial District of Waterbury. *Administration of Justice in Connecticut*, 1963 Inst. of Public Serv., Univ. of Conn. 25 (I.R. Davis ed.).

¹¹ 1869 Conn. Pub. Acts, Ch. XVIII, § 5 (Hartford and New Haven counties); *see also* D. Loomis and J. Calhoun, *The Judicial and Civil History of Connecticut*, 148 (1895).

or municipal courts.¹² Where the Courts of Common Pleas had no such jurisdiction, criminal appeals were taken directly to the Supreme Court of Errors, unless otherwise prescribed or limited by statute.¹³

In 1941, the individual Courts of Common Pleas were merged into a single, statewide Court of Common Pleas.¹⁴ Also in 1941, the Court of Common Pleas was given exclusive jurisdiction over all appeals from municipal agencies and the State Liquor Control Commission.¹⁵ Under the court reorganization of 1959, the Court of Common Pleas continued as an inferior trial court,¹⁶ but its entire criminal appellate jurisdiction was eliminated.¹⁷

The Court Reorganization Act of 1959 abolished the trial justices and municipal courts and created a Circuit Court.¹⁸ The 1959 reorganization also created a two-tier system of appellate review for most minor cases, with an appeal as of right to the Appellate Session of the Circuit Court (except small claims matters),¹⁹ and a further review before the Supreme Court, exclusively by certification.²⁰ The Supreme Court continued to exercise exclusive appellate jurisdiction over appeals from the Superior Court and the Court of Common Pleas.²¹ In 1971, the appellate jurisdiction of the Circuit Court was transferred to the Court of Common Pleas by transforming the Appellate Session of the Circuit Court into the Appellate Session of the Court of Common Pleas.²²

¹² 1887 Conn. Pub. Acts, Ch. XXXIV, § 2 and 1887 Conn. Pub. Acts, Ch. CXI, § 1 (New Haven County); 1889 Conn. Pub. Acts, Ch. CXIV, § 2 (New London County); and 1889 Conn. Pub. Acts, Ch. CLXXXVIII, § 1 (Fairfield County); *see also* D. Loomis and J. Calhoun, *The Judicial and Civil History of Connecticut*, 49 (1895).

¹³ 1887 Conn. Pub. Acts, Ch. XXXIV, § 2 and 1887 Conn. Pub. Acts, Ch. CXI, § 1 (New Haven County); 1889 Conn. Pub. Acts, Ch. CXIV, § 2 (New London County); and 1889 Conn. Pub. Acts, Ch. CLXXXVIII, § 1 (Fairfield County); *see also* D. Loomis and J. Calhoun, *The Judicial and Civil History of Connecticut*, 49 (1895).

¹⁴ 1941 Conn. Pub. Acts 286, §§ 1, 61; *see* 1941 Supp. to Conn. Gen. Stat. §§ 756f, 757f, Conn. Gen. Stat. § 51-142.

¹⁵ 1941 Conn. Pub. Acts 286, § 31; *see* 1941 Supp. to Conn. Gen. Stat. § 810f; Conn. Gen. Stat. § 52-7 (transferred to Conn. Gen. Stat. § 51-197b).

¹⁶ 1959 Conn. Pub. Acts 28, § 102; *see* Conn. Gen. Stat. § 52-6.

¹⁷ Conn. Gen. Stat. §§ 53-307, 54-16, repealed by 1959 Conn. Pub. Acts 28, §§ 204, 141.

¹⁸ 1959 Conn. Pub. Acts 28, §§ 1, 204, effective Jan. 1, 1961.

¹⁹ *See* 1959 Conn. Pub. Acts 28, § 30; *see* Conn. Gen. Stat. § 51-265.

²⁰ 1959 Conn. Pub. Acts 28, § 30; *see* Conn. Gen. Stat. § 51-265.

²¹ Conn. Gen. Stat. § 52-263.

²² 1971 Conn. Pub. Acts 870, § 7; *see* Conn. Gen. Stat. § 51-265 (transferred to Conn. Gen. Stat. § 52-6a in 1975).

When the Juvenile Courts were established in 1921, the county Courts of Common Pleas, where they existed, were given jurisdiction over juvenile appeals; otherwise, such appeals went to the county Superior Courts.²³ In 1941, the Superior Court was given exclusive jurisdiction over appeals from the Juvenile Courts.²⁴ In 1976, the Juvenile Court was merged into the Superior Court and thereafter juvenile appeals were taken to the Supreme Court.²⁵ In 1983, the Appellate Court assumed jurisdiction over appeals from the Superior Court in juvenile matters.²⁶

In 1971, the Uniform Administrative Procedures Act was adopted, giving the Court of Common Pleas jurisdiction over appeals from all state agencies.²⁷ Before 1971, all appeals from the Court of Common Pleas in administrative matters were taken directly to the Supreme Court as of right.²⁸ In 1971, appeals from the Court of Common Pleas in zoning and planning matters were restricted by a certification process.²⁹

Under the Court Merger Act of 1974,³⁰ which merged the Circuit Court into the Court of Common Pleas, the Appellate Session of the Court of Common Pleas was abolished and its functions were assigned to a new Appellate Session of the Superior Court.³¹ Appeal to the Supreme Court from decisions of the Appellate Session of the Superior Court was permitted only upon certification by the Appellate Session or by the Supreme Court.³²

²³ 1921 Conn. Pub. Acts 336, § 13; *see* Conn. Gen. Stat. § 1865 (rev. of 1930). Appeals from the Juvenile Court in the District of Waterbury were taken to the District Court of the District of Waterbury.

²⁴ 1941 Conn. Pub. Acts 347, § 6; *see* 1941 Supp. to Conn. Gen. Stat. § 285f, *see also* Conn. Gen. Stat. § 2815 (rev. of 1949).

²⁵ 1976 Conn. Pub. Acts 76-436, § 32(b); *see* Conn. Gen. Stat. § 17-70 (transferred to Conn. Gen. Stat. § 51-323 in 1977; transferred to Conn. Gen. Stat. § 46b-142(b) in 1979).

²⁶ 1983 Conn. Pub. Acts 83-29, § 36 (June Spec. Sess.).

²⁷ 1971 Conn. Pub. Acts 854, § 18(b); *see* Conn. Gen. Stat. § 4-183.

²⁸ *See* Conn. Gen. Stat. § 52-263.

²⁹ 1971 Conn. Pub. Acts 870, § 9; *see* Conn. Gen. Stat. § 8-8.

³⁰ 1974 Conn. Pub. Acts 74-183.

³¹ 1974 Conn. Pub. Acts 9; *see* Conn. Gen. Stat. § 51-265 (transferred to Conn. Gen. Stat. § 52-6a in revision of 1975).

³² 1974 Conn. Pub. Acts 9; *see* Conn. Gen. Stat. § 51-265 (transferred to Conn. Gen. Stat. § 52-6a in revision of 1975).

Under the Court Reorganization Act of 1976,³³ the Superior Court was established as the state's sole court of original jurisdiction.³⁴ Appeal from a judgment or order of the Superior Court not within the jurisdiction of the Appellate Session of the Superior Court was heard as of right by the Supreme Court.³⁵ The Appellate Session of the Superior Court was given jurisdiction over appeals in a variety of matters, most importantly from (1) civil actions with less than \$ 15,000 in demand, and (2) criminal actions for which the maximum punishment could be a \$5,000 fine or five years' imprisonment, or both.³⁶ As was the case previously, appeal to the Supreme Court from the Appellate Session of the Superior Court was only by certification by the Supreme Court or the Appellate Session.³⁷ Under this Act, appeals from the Superior Court to the Supreme Court in administrative matters were restricted to those matters certified by the Supreme Court.³⁸ Subsequently, two administrative matters were allowed a direct appeal to the Supreme Court: (1) appeals from the Commission on Human Rights and Opportunities,³⁹ and (2) appeals from administrative decisions of the Commissioner of Revenue Services.⁴⁰ These exceptions were eliminated in 1983.⁴¹

In 1981, all administrative appeals from the Superior Court, with one exception, were diverted from the Supreme Court to the Appellate Session of the Superior Court, with further review limited by certification by the Supreme Court.⁴² The one exception was appeals in zoning and planning cases, which remained appealable directly to the Supreme Court, provided that court certified the appeal.⁴³

³³. 1976 Conn. Pub. Acts 76-436.

³⁴. 1976 Conn. Pub. Acts 1; *see* Conn. Gen. Stat. § 51-164s. For a discussion of the merger and organization of the Superior Court, *see In re Shonna K.*, 77 Conn. App. 246, 251, 822 A.2d 1009 (App. Ct. 2003).

³⁵. Conn. Gen. Stat. § 52-263.

³⁶. Conn. Gen. Stat. § 51-197d.

³⁷. Conn. Gen. Stat. § 51-197f.

³⁸. 1976 Conn. Pub. Acts 76-436, §§ 3, 4; *see* Conn. Gen. Stat. § 52-7 (transferred to Conn. Gen. Stat. § 51-197b in 1977).

³⁹. 1977 Conn. Pub. Acts 77-347, § 7; 1977 Conn. Pub. Acts 77-604, § 60; *see* Conn. Gen. Stat. § 53-36b (transferred to Conn. Gen. Stat. § 46a-94 in 1981).

⁴⁰. 1980 Conn. Pub. Acts 80-352, § 1; *see* Conn. Gen. Stat. § 51-197b.

⁴¹. 1983 Conn. Pub. Acts 83-29, § 4 (June Spec. Sess.).

⁴². 1981 Conn. Pub. Acts 81-416, §§ 2, 3; *see* Conn. Gen. Stat. §§ 51-197b, 51-197d.

⁴³. *See* Conn. Gen. Stat. § 8-8.

After more than a decade of debate regarding a plenary intermediate appellate court,⁴⁴ a 1982 constitutional amendment created such a court.⁴⁵ This amendment was implemented by legislation that established the Appellate Court effective July 1, 1983,⁴⁶ and that allowed the term of the Appellate Session of the Superior Court to expire on June 30, 1983.⁴⁷ All matters pending in the Appellate Session were transferred to the Appellate Court on that date.⁴⁸ Appeal as of right from the Superior Court in administrative matters was re-established, but such appeals were to be taken to the Appellate Court, not the Supreme Court.⁴⁹ Appeals in planning and zoning matters, however, remained subject to a certification process by the Appellate Court.⁵⁰ The Appellate Court also assumed the Appellate Session's jurisdiction over appeals from the Compensation Review Board of the Workers' Compensation Commission.⁵¹

1-1:2 Appellate Procedure

1-1:2.1 Historical Background

For many years, Connecticut's appellate procedure followed the time-honored (and time-consuming) practice of draft findings, counter-findings, findings, assignments of error and bills of exception, in addition to briefs, appendices and transcripts.⁵² In 1949, a committee of judges drafted new appellate rules reforming

⁴⁴. See Conn. H.R. 5604, 5319 (1983); Conn. H.R. 5134 (1981); Conn. H.R.J. Res. 95 (1981); Conn. H.R. 6838 (1979); Address of Honorable John Hamilton King, 43 Conn. B.J. 714 (1969); Address of Chief Justice John Hamilton King, 42 Conn. B.J. 524 (1968); Address of Honorable John Hamilton King, 40 Conn. B.J. 733 (1966); Address of Chief Justice John Hamilton King, 39 Conn. B.J. 644 (1965).

⁴⁵. Conn. Const. of 1965, amend. XX (1982).

⁴⁶. 1983 Conn. Pub. Acts 83-29, §§ 1, 5 (June Spec. Sess.); see Conn. Gen. Stat. §§ 51-1a, 51-197c.

⁴⁷. 1983 Conn. Pub. Acts 83-29, §§ 5, 80, 82 (June Spec. Sess.).

⁴⁸. 1983 Conn. Pub. Acts 3 (June Spec. Sess.); see Conn. Gen. Stat. §§ 51-197a(c), 51-197a(d).

⁴⁹. 1983 Conn. Pub. Acts 83-29, § 4 (June Spec. Sess.); see Conn. Gen. Stat. § 51-197b(b).

⁵⁰. 1983 Conn. Pub. Acts 83-29, §§ 3, 4, 13 (June Spec. Sess.); see Conn. Gen. Stat. §§ 51-197a(a), 51-197b(b), 8-8.

⁵¹. 1983 Conn. Pub. Acts 83-29, §§ 4, 15 (June Spec. Sess.); see Conn. Gen. Stat. §§ 31-301b, 51-197b.

⁵². W. Maltbie, *Connecticut Appellate Procedure*, Ch. V (2d Ed. 1957). For a discussion of appellate procedure in the 18th and 19th centuries in England and America, see R. Pound, *Appellate Procedure in Civil Cases*, Chs. II-IV (1941).

the old procedure, but those rules were not adopted.⁵³ Meaningful reform had to wait until 1979, when the appellate rules received a major overhaul in which the cumbersome and error-prone finding/assignment of error procedure was abolished in favor of a simplified system relying principally on briefs and transcripts.⁵⁴

1-1:2.2 Rule-Making Power

In most jurisdictions, rule-making power is held by the legislature and delegated to the judiciary by statute.⁵⁵ Thus, although some procedural rules are enacted by legislatures in the form of statutes, in most states, rules of practice are adopted by courts and their rule-making grant. In Connecticut, appellate procedure is the subject of both court rules and statutes,⁵⁶ but the issue has arisen whether the legislature or the court has the constitutional power to adopt rules of court.⁵⁷ In a line of cases culminating in *State v. Clemente*, the Connecticut Supreme Court has held that the constitutional power to make rules of practice and procedure in Connecticut resides exclusively in the judicial branch of government.⁵⁸ In response, the General Assembly conformed the rule-making statute to authorize the court to make rules “in courts in which they have constitutional authority to make rules.”⁵⁹

Following its historic pronouncement in *Clemente*, however, the court has asserted its prerogative only sporadically. It has relied on procedural statutes to decide cases;⁶⁰ it has upheld seemingly

⁵³ Hon. Newell Jennings, *The Present and Proposed Appellate Procedure*, 23 Conn. B.J. 361 (1949); cf. 1951 P.B. iv (Preface).

⁵⁴ 40 Conn. L.J. No.44, Supp. A, at 46, May 1, 1979 (Amendments to the Rules of Practice, effective July 1, 1979).

⁵⁵ Richard S. Kay, *The Rule-Making Authority and Separation of Powers in Connecticut*, 8 Conn. L. Rev. 1, 27-33; see also Jack B. Weinstein, *Reform of Federal Court Rulemaking Procedures*, 76 Colum. L. Rev. 905, 906 (1976).

⁵⁶ Conn. Gen. Stat. §§ 52-263 to 52-269; 1978 P.B. §§ 61-1, et seq.

⁵⁷ See Richard S. Kay *The Rule-Making Authority and Separation of Powers in Connecticut*, 8 Conn. L. Rev. 1, 25-27; see also Note, *Court Rule-Making in Connecticut Revisited*, 16 Conn. L. Rev. 121 (1983).

⁵⁸ 166 Conn. 501, 353 A.2d 723 (1974).

⁵⁹ Conn. Gen. Stat. § 51-14. The statute also requires submission of all rules to the General Assembly for possible disapproval, a provision that is arguably unconstitutional. See *State v. Clemente*, 166 Conn. 501, 353 A.2d 723 (1974); *State ex rel. Kelman v. Schaffer*, 161 Conn. 522, 290 A.2d 327 (1971).

⁶⁰ *State v. Burke*, 182 Conn. 330, 438 A.2d 93 (1980); *Creative Eye, Inc. v. Raum*, 168 Conn. 560, 362 A.2d 845 (1975).

procedural statutes against constitutional attack;⁶¹ and it has construed rules and statutes to avoid constitutional conflict.⁶² In only two cases since *Clemente* has the Supreme Court found an irreconcilable conflict necessitating a holding that the rule trumped the statute.⁶³ Most recently, the Supreme Court has taken a conciliatory stance in reviewing the legitimacy of statutes that allegedly infringed the Court's constitutional prerogatives. In one case, the court abjured exclusive power over rules of evidence and upheld a statute concerning competency of child witnesses.⁶⁴ In a second case, the court upheld a statute whose purpose was to overrule two Supreme Court decisions (which limited closing argument to the jury) on the tenuous ground that "the existence of discretionary judicial authority ... does not automatically preclude some measure of legislative regulation."⁶⁵

In two related cases, the Supreme Court upheld a statute limiting the Court's jurisdiction to hear writs of error in habeas corpus appeals where the appellate rule directly conflicted with a statute granting jurisdiction to the court.⁶⁶ The court concluded that the statute trumped the rule because Practice Book rules cannot confer jurisdiction on the court,⁶⁷ and the statute did not infringe upon a jurisdictional power possessed by the court at common law at the time of the adoption of the Connecticut Constitution in 1818.⁶⁸

^{61.} *State v. Nardini*, 187 Conn. 109, 445 A.2d 304 (1982) (Sentence Review Division); *State v. Rodriguez*, 180 Conn. 382, 429 A.2d 919 (1980) (juror qualification); *State v. Darden*, 171 Conn. 677, 372 A.2d 99 (1976) (minimum sentences); *State v. Olds*, 171 Conn. 395, 370 A.2d 969 (1976) (six-member jury).

^{62.} *State v. James*, 211 Conn. 555, 560 A.2d 426 (1989) (competency of child witness); *Hartford Fed. Sav. & Loan Ass'n v. Tucker*, 192 Conn. 1, 469 A.2d 778 (1984) (automatic stays); *Heslin v. Connecticut Law Clinic of Trantolo & Trantolo*, 190 Conn. 510, 461 A.2d 938 (1983) (lawyer advertising); *Steadwell v. Warden*, 186 Conn. 153, 439 A.2d 1078 (1982) (disclosure of presentence investigation report).

^{63.} *State v. King*, 187 Conn. 292, 445 A.2d 901 (1982) (joinder of criminal defendants); *State v. Canady*, 187 Conn. 281, 445 A.2d 895 (1982) (use of grand jury transcript); *see also Birmingham v. Kielczewski*, 17 Conn. App. 219, 221-22, 551 A.2d 1260 (1988).

^{64.} *State v. James*, 211 Conn. 555, 562, 560 A.2d 426 (1989) (Conn. Gen. Stat. § 54-86h); *see also* Conn. Gen. Stat. § 51-14a.

^{65.} *Bartholomew v. Schweizer*, 217 Conn. 671, 678-79, 587 A.2d 1014 (1991) (Conn. Gen. Stat. § 52-216b).

^{66.} *Carpenter v. Meachum*, 229 Conn. 193, 198-99, 640 A.2d 591 (1994); *Simms v. Warden (I)*, 229 Conn. 178, 183, 640 A.2d 601 (1994).

^{67.} *Simms v. Warden (I)*, 229 Conn. 178, 184, 640 A.2d 601 (1994).

^{68.} *Carpenter v. Meachum*, 229 Conn. 193, 201-02, 640 A.2d 591 (1994).

Thus, until the court casts more light on the rule-making power issue, all procedural statutes must fall under the *Clemente* cloud.⁶⁹ As a result, procedural statutes cited in this work must be taken “subject to” *Clemente*. In the following sections, the *Clemente* issue will be discussed only where the constitutional problem appears particularly acute.

1-1:2.3 Interpretation of the Rules

The appellate rules state:

The design of these rules being to facilitate business and advance justice, they will be interpreted liberally in any appellate matter where it shall be manifest that a strict adherence to them will work surprise or injustice.⁷⁰

In interpreting the rules of practice, the rules of statutory construction are “clearly applicable.”⁷¹

No reported case has liberally interpreted a rule to alter a result that a “strict adherence” to the rule might otherwise dictate.⁷² Interpretation could be helpful in situations where a rule is susceptible to being construed, such as where the rule is ambiguous, inconsistent or incomplete, or might have unintended consequences. This power to interpret the rules liberally, however, should not be read as authority to apply the rules liberally.⁷³ If the court believes that justice requires a rule’s application, notwithstanding its terms, it should invoke its express powers to suspend the rule rather than its power to interpret the rule.⁷⁴

⁶⁹ For a discussion of more recent cases on rule-making authority, see James F. Sullivan, *The Scope of Procedural Rule-Making in Connecticut: Further Confusion in State v. James & Bartholomew v. Schweizer*, 65 Conn. B. J. 411 (1991); Note, *Court Rule-Making in Connecticut Revisited*, 16 Conn. L. Rev. 121 (1983). For legislative efforts to regain the rule-making authority, see Conn. H.R.J. Res. 5 (1975); 18 Conn. H.R. Proc., Pt. 9, 1975 Sess., p. 4254.

⁷⁰ P.B. § 60-1.

⁷¹ *DeTeves v. DeTeves*, 202 Conn. 292, 298, 520 A.2d 608 (1987).

⁷² In interpreting the civil rules of the Superior Court, the Supreme Court explicitly disregarded the plain language of a rule to reach an interpretation that it believed to be consistent with the intent of the rules. See *State v. Cain*, 223 Conn. 731, 738-39, 613 A.2d 804 (1992) (interpreting P.B. § 40-15(2)).

⁷³ See *Schiavone v. Fortune*, 477 U.S. 21, 106 S. Ct. 2379 (1986); see also N.Y. Civil. Prac. L. & R. 104 (1972) (discussed in D. Siegel, *Handbook of New York Practice* 6 (1978)).

⁷⁴ See *State v. Kreske*, 130 Conn. 558, 559 n.1, 36 A.2d 389 (1944) (using its power to interpret, the Court in effect suspended the application of a recently adopted rule at a time

1-1:2.4 Applicability of Rules

Before October 1, 1992, there were two sets of appellate procedure rules, one for the Supreme Court and one for the Appellate Court.⁷⁵ Effective October 1, 1992, the Appellate Court's rules were repealed, or transferred into the Supreme Court's rules, resulting in the combined and renamed "Rules of Appellate Procedure."⁷⁶

1-2 ORIGINAL JURISDICTION

1-2:1 Supreme Court

The Connecticut Supreme Court has no inherent or general original jurisdiction.⁷⁷ By constitutional amendment and statute, the Court has original jurisdiction (1) to correct or establish a reapportionment plan;⁷⁸ (2) to remove or suspend all judges, except those who are elected;⁷⁹ (3) to answer questions of law certified by federal courts⁸⁰ and the highest court of another state or a federally recognized tribe;⁸¹ and (4) to settle election disputes in federal elections.⁸²

The Court has jurisdiction to review certain non-final judgments of the Superior Court,⁸³ but such review remains an appeal because

when the rules did not expressly authorize suspension of a rule). Suspension of the rules is discussed more fully in Chapter 4, § 4-6:5.

⁷⁵ Rules for the Appellate Court were adopted effective August 23, 1983. 45 Conn. L. J. No.8, Aug. 23, 1983, p. 1C. The Appellate Court rules adopted the Supreme Court rules "except where a particular practice or procedure is specified by the rules of the appellate court." P.B. § 2000.

⁷⁶ 54 Conn. L. J. No. 4, July 28, 1992, p. PB-1.

⁷⁷ Conn. Const. of 1965, art. V, § 1; see *Winchester Repeating Arms Co. v. Radcliffe*, 134 Conn. 164, 170, 56 A.2d 1 (1947) (motion for expenses); *Application of Ansonia Water Co.*, 80 Conn. 326, 327, 68 A. 378 (1907) (writ of mandamus); see also *State v. Gross*, 109 Conn. 738, 147 A. 670 (1929) (bail application).

⁷⁸ Conn. Const. of 1965, amend. XII, § d (1976) (amended 1980, amend. XVI, § 2(d)); Conn. Gen. Stat. § 51-199(b)(1); see Chapter 10, § 10-1:1.

⁷⁹ Conn. Const. of 1965, amend. XI (1976); Conn. Gen. Stat. § 51-51j; see also Conn. Gen. Stat. § 51-199(b)(7); see Chapter 9, § 9-3:3.

⁸⁰ Conn. Gen. Stat. § 51-199a; see Chapter 10, § 10-3:2.1.

⁸¹ Conn. Gen. Stat. § 51-199b; see Chapter 10, §§ 10-3:2.2, 10-3:2.3.

⁸² Conn. Gen. Stat. § 51-199(b)(5); see Conn. Gen. Stat. § 9-323, discussed Chapter 10, § 10-5. Election disputes in state and local elections are heard by the Supreme Court only by way of appeal; see Conn. Gen. Stat. § 9-325, discussed in Chapter 4, § 4-6:2.

⁸³ Conn. Gen. Stat. § 51-199(b)(9) (matters of public importance); Conn. Gen. Stat. § 52-265a, discussed in Chapter 4, § 4-6:1; Conn. Gen. Stat. § 51-199(b)(5) (primary disputes); Conn. Gen. Stat. § 9-325, discussed in Chapter 4, § 4-6:2.

it is based on a lower-court decision and is not a trial de novo or a matter of first instance.⁸⁴

The Supreme Court has jurisdiction to decide questions of law on a reservation from the Superior Court.⁸⁵ Such jurisdiction, however, can be invoked only in the context of an ongoing action in the Superior Court; it may not be brought initially to the Supreme Court.

Several states authorize a reference or certification procedure by which the state legislature can ask the state's highest court to pass on the constitutionality of proposed legislation, either by constitution⁸⁶ or by statute.⁸⁷ Connecticut has no such provision. Although the Connecticut Supreme Court has twice, when requested, given the General Assembly an advisory opinion on the constitutionality of a proposed statute,⁸⁸ neither opinion cited any authority for such a procedure. When the General Assembly asked for an advisory opinion a third time, however, the court reassessed its prior actions and declined to give its opinion because such an action was not only extrajudicial but also unconstitutional.⁸⁹

Since then, the court has consistently held that it has no power to issue advisory opinions.⁹⁰ To quote the court in a case where it rejected a reservation that sought a declaration of the constitutionality of a statute:

We do not give advisory opinions, nor do we sit as roving commissions assigned to pass judgment on the validity of legislative enactments.⁹¹

⁸⁴ *Wrim v. Dunleavy*, 186 Conn. 125, 133-34, 440 A.2d 261 (1982).

⁸⁵ Conn. Gen. Stat. § 52-235; see Chapter 2, § 2-1:8.

⁸⁶ See, e.g., Colo. Const., art. VI, § 3; Fla. Const., art. IV, § 10; Mass. Const., pt. 2, c. 3, art. 2; Me. Const., art. IV, § 3; Mich. Const., art. III, § 8; N.H. Const., part 2, art. 74; N.C. Const., art. IV, § 12; R.I. Const., art. 10, § 3; S.D. Const., art. V, § 5. North Carolina has implied such an authorization under N.C. Const., art. IV § 12; see *Bledsoe, The Advisory Opinion in North Carolina, 1947-1991*, 70 N.C.L. Rev. 1853 (1992).

⁸⁷ See, e.g., ALA. Code 12-2-10; DE. Code Tit. 10, § 1.1.

⁸⁸ *Opinion of the Judges of the Supreme Court*, 32 Conn. 565 (1865) (request by resolution); see D. Loomis and J. Calhoun, *The Judicial and Civil History of Connecticut*, 136-37 (1895); *Opinion of the Judges of the Supreme Court*, 30 Conn. 591 (1862) (request by statute).

⁸⁹ *Reply of the Judges of the Supreme Court to the General Assembly*, 33 Conn. 556 (1867) (request by resolution); see D. Loomis and J. Calhoun, *The Judicial and Civil History of Connecticut*, 137 (1895). For an early opinion discussing advisory opinions, see *Wilson v. Hinkley*, Kirby 199 (1787).

⁹⁰ See Chapter 3, §§ 3-1:3.4, 3-2:1, 3-2:5; Chapter 9, § 9-2:1.1; Chapter 10, § 10-2:1.

⁹¹ *Motor Vehicle Mfrs. Ass'n of the United States, Inc. v. O'Neill*, 203 Conn. 63, 75, 523 A.2d 486 (1987). Justice Felix Frankfurter has been quoted as saying: "It must be remembered

Legislative leaders may, however, request the opinion of the attorney general on questions of law.⁹²

1-2:2 Appellate Court

The Appellate Court has no original jurisdiction.⁹³ By statute, the Supreme Court may transfer any matter within its jurisdiction to the Appellate Court, except reapportionment matters.⁹⁴ Thus, matters within the Supreme Court's original jurisdiction, other than reapportionment matters, would appear transferable, namely suspension and removal of judges and certification of questions of law by federal courts.⁹⁵ The Appellate Court does have authority to issue "all writs necessary and appropriate in aid of its jurisdiction," but this refers to its appellate jurisdiction and is not an independent grant of original jurisdiction.⁹⁶

1-3 APPELLATE JURISDICTION

1-3:1 Appeal to the Appellate Court From the Superior Court

An appeal as of right lies to the Appellate Court from "final judgments or actions" of the Superior Court,⁹⁷ except for: (1) small claims matters, which are not appealable;⁹⁸ (2) appeals from planning and zoning matters and cases arising under the Inland Wetlands and Watercourses Act,⁹⁹ which may be appealed only upon certification by the Appellate Court,¹⁰⁰ and (3) matters specifically reserved for direct appeal to the Supreme Court.¹⁰¹

that advisory opinions are not merely advisory opinions. They are ghosts that slay." Quoted in Edsall, *The Advisory Opinion in North Carolina*, 27 N.C.L. Rev. 297 (1949).

⁹² Conn. Gen. Stat. § 3-125.

⁹³ Conn. Const. of 1965, amend. XX (1982); Conn. Gen. Stat. § 51-197a.

⁹⁴ Conn. Gen. Stat. § 51-199(c).

⁹⁵ See § 1-3:6.

⁹⁶ Conn. Gen. Stat. § 51-197a(b); see § 1-5:1.

⁹⁷ Conn. Gen. Stat. § 51-197a(a).

⁹⁸ Conn. Gen. Stat. § 51-197a(a); see Chapter 2, § 2-1:5.1.

⁹⁹ Conn. Gen. Stat. § 51-197a(a).

¹⁰⁰ See Conn. Gen. Stat. §§ 8-8, 8-9, 8-28, 8-30.

¹⁰¹ Conn. Gen. Stat. § 51-197a(a); see Conn. Gen. Stat. § 51-199.

All challenges to orders denying or fixing bail are to be reviewed by the Appellate Court,¹⁰² but the Supreme Court, by rule, has automatically transferred to itself the review of bail orders in all cases on appeal to the Supreme Court or if the defendant could appeal to the Supreme Court if convicted.¹⁰³

The Appellate Court also has direct jurisdiction over appeals from decisions of the Compensation Review Board of the Workers' Compensation Commission.¹⁰⁴

An appeal taken to the Appellate Court may be diverted for direct review by the Supreme Court under the Supreme Court's power to transfer to itself any cause pending before the Appellate Court.¹⁰⁵ Conversely, the Supreme Court also has the power to transfer any case on its docket to the Appellate Court, except for reapportionment matters.¹⁰⁶

There is no appeal as of right from a "final determination" of the Appellate Court.¹⁰⁷ Further appellate review is discretionary with the Supreme Court and requires the vote of three justices to certify the case for review, except that if fewer than six judges are available to consider a petition for certification, a vote of only two justices is required.¹⁰⁸

No appeal to the Supreme Court is authorized from a decision of the Appellate Court denying certification to appeal, as such a ruling is not the "final determination" of the appeal.¹⁰⁹ For like reason, no appeal should lie from a decision of the Appellate Court (1) granting or denying a motion for review, (2) acting under its powers to supervise procedure or to suspend the rules, or (3) acting in aid of its jurisdiction. Nevertheless, should any decision of the Appellate Court implicate the jurisdiction of the Supreme Court, Supreme Court intercession could be requested. The appropriate procedure, however, would seem to be to invoke the Supreme

¹⁰² Conn. Gen. Stat. § 54-63g.

¹⁰³ P.B. § 65-3; *see* Chapter 6, § 6-2:5.7.

¹⁰⁴ Conn. Gen. Stat. § 31-301b. A final judgment is not required in such appeals. Conn. Gen. Stat. § 31-301b; *O'Connor v. Med-Center Home Health Care, Inc.*, 303 Conn. 238, 242 n.3, 32 A.3d 956 (2001). Workers' Compensation appeals are not discussed in this work.

¹⁰⁵ Conn. Gen. Stat. § 51-199(c); P.B. § 65-1; *see* § 4-5:2.3.

¹⁰⁶ Conn. Gen. Stat. § 51-199(c); P.B. § 65-1; *see* § 4-5:2.3.

¹⁰⁷ Conn. Gen. Stat. § 51-197f.

¹⁰⁸ Conn. Gen. Stat. § 51-197f. Certification is discussed more fully in Chapter 7.

¹⁰⁹ *Ingersoll v. Planning & Zoning Comm'n*, 194 Conn. 277, 279, 479 A.2d 1207 (1984).

Court's power to protect its own jurisdiction, not to appeal from the Appellate Court action.

1-3:2 Appeal to the Supreme Court From the Superior Court

Appeals may reach the Supreme Court in one of three ways: (1) appeal as of right from the Superior Court; (2) transfer of an appeal initially taken to the Appellate Court;¹¹⁰ or (3) certification of an appeal after a “final determination” by the Appellate Court.¹¹¹

The Supreme Court's jurisdiction, other than by way of transfer or certification, is defined in the following statute:¹¹²

The following matters shall be taken directly to the Supreme Court: (1) Any matter brought pursuant to the original jurisdiction of the Supreme Court under section 2 of article sixteen of the amendments to the Constitution; (2) an appeal in any matter where the Superior Court declares invalid a state statute or a provision of the state Constitution; (3) an appeal in any criminal action involving a conviction for a capital felony under the provisions of section 53a-54b in effect prior to April 25, 2012, class A felony or any other felony, including any persistent offender status, for which the maximum sentence which may be imposed exceeds twenty years; (4) review of a sentence of death pursuant to section 53a-46b; (5) any election or primary dispute brought to the Supreme Court pursuant to section 9-323 or 9-325; (6) an appeal of any reprimand or censure of a probate judge pursuant to section 45a-65; (7) any matter regarding judicial removal or suspension pursuant to section 51-51j; (8) an appeal of any decision of the Judicial Review Council pursuant to section 51-51r; (9) any matter brought to the Supreme Court pursuant to section 52-265a; (10) writs of error; and (11) any other matter as provided by law.

^{110.} See § 1-3:6; Chapter 4, § 4-5:2.3.

^{111.} See § 1-3:3.

^{112.} Conn. Gen. Stat. § 51-199(b).

This provision does not distinguish between the Court's appellate and original jurisdiction. Reapportionment matters, as stated, fall within the Court's original jurisdiction.¹¹³ Item (4), death sentences, must be reviewed by the Supreme Court, even if the defendant does not appeal.¹¹⁴ Item (5), election disputes, involves original jurisdiction over federal elections, and appellate jurisdiction over state and local elections.¹¹⁵ Item (7), the removal and suspension of Superior Court judges, is a matter of original jurisdiction, whereas item (8), review of decisions of the Judicial Review Council, is a matter of appellate jurisdiction.¹¹⁶ Item (9), expedited appeals, is subject to some constitutional concerns.¹¹⁷ Item (11), "any other matter provided by law," incorporates at present only certification of questions of law from federal courts, a matter of original jurisdiction and not appellate jurisdiction.¹¹⁸

1-3:3 Appeal to the Supreme Court by Certification From the Appellate Court

The Supreme Court has jurisdiction to review a "final determination of any appeal" by the Appellate Court. Certification requires a vote by three justices of the Supreme Court following petition by an aggrieved party, except that if fewer than six judges are available to consider a petition for certification, a vote of only two justices is required.¹¹⁹ Although the statute governing certification allows the Appellate Court to seek certification, the rules no longer implement this procedure.¹²⁰ If the Appellate Court wishes the Supreme Court to consider an appeal, it may request a transfer by filing a brief statement with the Supreme Court setting forth the reasons transfer is appropriate.¹²¹

^{113.} See Chapter 10, § 10-1:1.

^{114.} See Chapter 3, § 3-1:15 and Chapter 9, § 9-5:1.

^{115.} See Chapter 10, § 10-5 and Chapter 4, § 4-6:2.

^{116.} See Chapter 9, § 9-3.

^{117.} *State ex rel. Kelman v. Schaffer*, 161 Conn. 522, 530-31, 290 A.2d 327 (1971), overruled on other grounds by *Serrani v. Board of Ethics*, 225 Conn. 305, 622 A.2d 1009 (1993); see Chapter 4, § 4-6:1.2.

^{118.} See Chapter 10, § 10-3:2.1.

^{119.} Conn. Gen. Stat. § 51-197f; Conn. Pub. Acts 96-179. For cases discussing "final determination," see Chapter 7, § 7-1:2.3.

^{120.} Compare P.B. §§ 84-1, 84-2 with P.B. §§ 4126-4127 (1986).

^{121.} P.B. § 65-2.

A petition for certification by an aggrieved party may be granted only for “special and important reasons.”¹²² The rules list, without limiting the court’s discretion, the types of special and important reasons that may be considered on petition.¹²³ The Supreme Court has no power to certify an Appellate Court decision for review on its own motion, but the court can bypass an Appellate Court decision by transferring an appeal to itself from the Appellate Court.¹²⁴

A rule of court provides that a certified appeal may be taken to the Supreme Court from “causes determined” in the Appellate Court.¹²⁵ Statutory jurisdiction cannot be enlarged by rule of court and the court has interpreted the term “cause” as used in that rule not to increase its jurisdiction beyond the appeal statute.¹²⁶

Because certification is authorized only from a “final determination” by the Appellate Court, the Supreme Court has no jurisdiction to certify for its review, by way of a motion for review, a decision by the Appellate Court that is not a final determination.¹²⁷

1-3:4 Appeal to the Appellate Court by Certification From the Superior Court

Appeals in planning and zoning matters and cases arising under the Inland Wetlands and Watercourses Act are to be taken to the Appellate Court, but only upon certification by that court.¹²⁸ The zoning statute authorizing certification to the Appellate Court states in pertinent part:

There shall be no right to further review except to the Appellate Court by certification for review, on the vote of two judges of the Appellate Court so to

¹²² P.B. § 84-2.

¹²³ P.B. § 84-2.

¹²⁴ See Chapter 4, § 4-5:2.3.

¹²⁵ P.B. § 84-1.

¹²⁶ *State v. Ayala*, 222 Conn. 331, 338, 610 A.2d 1162 (1992).

¹²⁷ *State v. Ellis*, 224 Conn. 711, 719-21, 621 A.2d 250 (1993) (grant of motion to strike issue in brief); *Ingersoll v. Planning & Zoning Comm'n*, 194 Conn. 277, 279, 479 A.2d 1207 (1984) (denial of petition for certification to Appellate Court); see Chapter 6, § 6-2:5.9, and Chapter 7, § 7-1:2.3.

¹²⁸ Conn. Gen. Stat. §§ 8-8, 8-9, 8-28, 8-30; see Conn. Gen. Stat. § 51-197a(a).

certify and under such other rules as the judges of the Appellate Court establish.¹²⁹

The statute does not specify whether the certification process is initiated by the aggrieved party, the court below, or the Appellate Court itself. The statute does authorize the Appellate Court to provide for certification by rule, but it has provided for such certification from the trial court only on a petition by an aggrieved party.¹³⁰ Without further authorization by statute or rule, requests for certification by the trial court or certification by the Appellate Court itself would not seem authorized.

1-3:5 Petitions for Review to the Appellate Court

In a few instances, a form of expedited appeal can be taken to the Appellate Court by way of a petition for review. The following Superior Court orders, whether or not qualifying as final judgments, can be reviewed under a petition for review: (1) orders closing the courtroom or sealing court files;¹³¹ (2) grand jury disclosure orders;¹³² and (3) bail orders.¹³³

Before Appellate Court determination of a petition for review, the Supreme Court can obtain jurisdiction over the petition by way of its transfer jurisdiction.¹³⁴ If the Appellate Court decides the petition for review, the right to Supreme Court review of the Appellate Court's decision by way of certification depends on the nature of the petition. If the petition challenges a bail order or an order closing the courtroom or sealing court records, further review by way of the certification statute is not available.¹³⁵ If the petition challenges a grand jury disclosure order, then certification review by the Supreme Court is permissible.¹³⁶

Even if certification review pursuant to General Statutes § 51-197f is not permissible, Supreme Court review of the Appellate

¹²⁹ Conn. Gen. Stat. § 8-8(o).

¹³⁰ P.B. §§ 8-1 to 8-5.

¹³¹ Conn. Gen. Stat. § 51-164x; *see* Chapter 4, § 4-6:4.

¹³² Conn. Gen. Stat. § 54-47g; *see* Chapter 4, § 4-6:6.

¹³³ Conn. Gen. Stat. § 54-63g; *see* Chapter 4, § 4-6:7.

¹³⁴ *See* § 1-3:6.

¹³⁵ *State v. Ayala*, 222 Conn. 331, 341, 610 A.2d 1162 (1992); *State v. Patel*, 327 Conn. 932, 171 A.3d 1037 (2017).

¹³⁶ *In re Judicial Inquiry No. 2005-02*, 293 Conn. 247, 253-60, 977 A.2d 166 (2009).

Court's decision on the petition may be reviewed upon certification by the chief justice pursuant to General Statutes § 52-265a. That process is discussed more fully in Chapter 4, § 4-6:1.

1-3:6 Transfer of Jurisdiction

1-3:6.1 Supreme Court

The Supreme Court has broad transfer powers by statute:

The Supreme Court may transfer to itself a cause in the Appellate Court. Except for any matter brought pursuant to its original jurisdiction under section 2 of article sixteen of the amendments to the constitution, the Supreme Court may transfer a cause or class of causes from itself ... to the Appellate Court. The court to which a cause is transferred has jurisdiction.¹³⁷

Thus, the Supreme Court may transfer to itself any cause pending before the Appellate Court and may transfer to the Appellate Court any matter brought directly to the Supreme Court, except reapportionment matters. The court to which a matter has been transferred is conferred jurisdiction over that matter, even if the matter could not have been brought there originally.¹³⁸

For example, the Supreme Court has no jurisdiction over petitions for review that the Appellate Court has determined, because such a decision on a petition is not a final determination of an “appeal” within the certification statute.¹³⁹ But a petition for review can be *transferred* from the Appellate Court to the Supreme Court (before its determination by the Appellate Court), because a “petition” qualifies under the generic term “cause” employed in the transfer jurisdiction statute.¹⁴⁰

Similarly, although the Supreme Court has no jurisdiction, either by direct appeal or by certification, over administrative appeals from state or local agencies, once the Appellate Court has

¹³⁷. Conn. Gen. Stat. § 51-199(c). Transfer procedures are discussed in Chapter 4, § 4-5.

¹³⁸. Conn. Gen. Stat. § 51-199(c).

¹³⁹. Conn. Gen. Stat. § 51-197f; see §§ 1-3:3, 1-3:5.

¹⁴⁰. Conn. Gen. Stat. § 51-199(c); see § 1-3:5; see also *State v. Ayala*, 222 Conn. 331, 337 n.9 (1992) (denial of transfer of motion for review).

jurisdiction of such a case by appeal or certification, the Supreme Court can transfer that case from the Appellate Court to itself.¹⁴¹

Although the Supreme Court has no jurisdiction to review Appellate Court determinations of motions,¹⁴² the Supreme Court can, before the Appellate Court's final determination of the appeal, transfer the entire case to itself and address the issue anew.¹⁴³ The entire case, not just the motion, should be transferred, as a motion pending before the Appellate Court would not seem to be a "cause" within the transfer statute.¹⁴⁴ Theoretically, the Supreme Court could transfer the entire case, decide the motion, and then retransfer the case back to the Appellate Court. The Court has indicated that it would prefer to review Appellate Court decisions on motions not by way of transfer, but after the ultimate outcome of the Appellate Court appeal for two reasons: (1) if the moving party prevails on the merits, the issue may become moot, and (2) if the moving party fails on the merits, the matter can be reviewed by way of certification.¹⁴⁵

Because the transfer statute excludes only reapportionment matters from the Court's transfer jurisdiction, it appears that the Supreme Court has statutory power to transfer to the Appellate Court the following matters within its original jurisdiction: (1) certification of questions of law from non-Connecticut courts,¹⁴⁶ (2) suspension and removal of Superior and Supreme Court judges,¹⁴⁷ and (3) disputes in federal elections.¹⁴⁸ Transfer of such matters would appear unlikely, if not unwise. Transfer of certified questions of law would be illogical, because certification by another court is predicated on the absence of controlling state precedent and the need for an authoritative pronouncement by the

^{141.} *Commission on Human Rights & Opportunities v. Windsor Hall Rest Home*, 232 Conn. 181, 182 n.2, 653 A.2d 181 (1995) (appeal by state agency to Appellate Court); *Kaufman v. Zoning Comm'n*, 232 Conn. 122, 126-27, 635 A.2d 798 (1995) (certification to appeal by local agency).

^{142.} See § 1-3:3.

^{143.} *State v. Ellis*, 224 Conn. 711, 722, 621 A.2d 250 (1993).

^{144.} *But see State v. Ayala*, 222 Conn. 331, 337 n.9, 610 A.2d 1162 (1992).

^{145.} *State v. Ellis*, 224 Conn. 711, 722, 621 A.2d 250 (1993).

^{146.} 1999 Conn. Pub. Acts No. 99-107; see Chapter 10, § 10-3:2.

^{147.} Conn. Gen. Stat. § 51-51j; see Chapter 9, § 9-3:3.

^{148.} Conn. Gen. Stat. § 9-323; see Chapter 10, § 10-5.

state's highest court.¹⁴⁹ As to sanctions for state court judges, the state's highest court is the more appropriate disciplinarian in both theory and practice.

Direct appeals to the Supreme Court also fall within the Supreme Court's power to transfer any "cause" to the Appellate Court.¹⁵⁰ Notwithstanding the statutory grant of direct access to the Supreme Court, such transfers would seem warranted in routine cases that do not involve matters that would be grounds for certification.¹⁵¹

Writs of error can only be brought to the Supreme Court,¹⁵² but once there they can be transferred to the Appellate Court.¹⁵³

1-3:6.2 Appellate Court

The Appellate Court has no discretionary transfer jurisdiction,¹⁵⁴ and it must transfer to the Supreme Court any appeal mistakenly taken to the Appellate Court.¹⁵⁵

1-3:7 Retained Jurisdiction

In an unusual case, the Supreme Court may refrain from rendering an opinion but retain jurisdiction over the matter pending the decision by another court. For example, in a case challenging the constitutionality of a reapportionment plan, the court gave its opinion that the plan did not violate the state constitution but refrained from ruling on the federal constitutional issue because that question was before the U.S. Supreme Court in a parallel proceeding.¹⁵⁶ The court retained jurisdiction "in order that appropriate state action may be taken, if necessary, consonant with federal constitutional requirements relating to equality of representation."¹⁵⁷

^{149.} See Chapter 10, § 10-2:1.

^{150.} See, e.g., *State v. Sherman*, 38 Conn. App. 371, 374 n.1, 662 A.2d 767, cert. denied, 235 Conn. 905 (1995) (murder).

^{151.} P.B. § 84-2; see Chapter 7, § 7-1:3.

^{152.} Conn. Gen. Stat. § 52-272; P.B. § 72-1(a).

^{153.} See *Safe Homes Sec., Inc. v. Lewis*, 52 Conn. App. 780, 727 A.2d 1289 (1999).

^{154.} See Conn. Gen. Stat. §§ 51-197a, 51-199(c).

^{155.} P.B. § 65-4; see Chapter 4, § 4-5:1.

^{156.} *Miller v. Schaffer*, 164 Conn. 8, 30-31, 320 A.2d 1 (1972).

^{157.} *Miller v. Schaffer*, 164 Conn. 8, 30-31, 320 A.2d 1 (1972).

In another case, the court invoked the concept of retained jurisdiction under a questionable set of facts.¹⁵⁸ On the first appeal in the case, the Supreme Court transferred the appeal from the Appellate Court to itself, and thereafter remanded the case to the trial court for further proceedings, without retaining continuing jurisdiction over the case.¹⁵⁹ A second appeal from the trial court was then taken directly to the Supreme Court.¹⁶⁰ Although a direct appeal to the Supreme Court is not authorized by statute under these circumstances,¹⁶¹ the Court asserted “retained jurisdiction.”¹⁶² The only authorities cited by the Court for such jurisdiction were the transfer statute and its own transfer rule permitting transfers,¹⁶³ even though the appeal had not been transferred from the Appellate Court.

In cases where jurisdiction has been retained, the court’s jurisdiction can be invoked again by a motion requesting the court to exercise such jurisdiction and to take appropriate action.¹⁶⁴

1-3:8 Pendent Appellate Jurisdiction

On an appeal from a final judgment that terminates all proceedings in the trial court, the reviewing court has appellate jurisdiction over all trial decisions or orders that have been properly preserved. This includes non-final orders adverse to the appellant, as well as non-final orders favorable to the appellant but that the appellee seeks to have reviewed in the event the appellant prevails on his appeal.¹⁶⁵

If an appeal is authorized from a judgment that does not terminate all proceedings in the trial court, the extent of appellate jurisdiction is ill-defined. In this event, some jurisdictions have adopted the doctrine of “pendent appellate jurisdiction” based on considerations of justice and efficiency. The doctrine vests the

¹⁵⁸. *State v. Garcia (II)*, 235 Conn. 671, 669 A.2d 573 (1996).

¹⁵⁹. *State v. Garcia (I)*, 233 Conn. 44, 94, 658 A.2d 947 (1995).

¹⁶⁰. *State v. Garcia (II)*, 235 Conn. 671, 671-73, 669 A.2d 573 (1996).

¹⁶¹. *State v. Garcia (II)*, 235 Conn. 671, 672 n.1, 669 A.2d 573 (1996) (no jurisdiction per Conn. Gen. Stat. § 51-199(b) or Conn. Gen. Stat. § 52-265a).

¹⁶². *State v. Garcia (II)*, 235 Conn. 671, 672 n.1, 669 A.2d 573 (1996) (no jurisdiction per Conn. Gen. Stat. § 51-199(b) or Conn. Gen. Stat. § 52-265a).

¹⁶³. *State v. Garcia (II)*, 235 Conn. 671, 672 n.1, 669 A.2d 573 (1996) (no jurisdiction per Conn. Gen. Stat. § 51-199(b) or Conn. Gen. Stat. § 52-265a).

¹⁶⁴. *Miller v. Schaffer*, 165 Conn. 316, 342 A.2d 909 (1973).

¹⁶⁵. See Chapter 4, § 4-3:5.2; Chapter 8, § 8-4:1.3.

appellate court with discretionary power to review not only matters properly on appeal but also those not otherwise appealable but intertwined with the matters on appeal.

This most commonly occurs in a case in which a non-final judgment is appealable (under a statute or rule authorizing interlocutory appeals) but in which other non-final judgments in the same case are not so appealable. A comparable situation could occur where entry of a partial final judgment is authorized. Thus, where the appealable and non-appealable issues are substantively or procedurally bound together, considerations of justice and efficiency argue for the expansion of the appellate court's jurisdiction to cover such intertwined matters.

No reported Connecticut case has adopted or rejected the doctrine of pendent appellate jurisdiction. Connecticut does authorize appeals from non-final judgments under limited circumstances,¹⁶⁶ and does provide for the appeal of partial final judgments.¹⁶⁷ Thus, the doctrine does have potential application in Connecticut.

Connecticut does permit a party who appeals a final judgment on the merits also to appeal adverse non-final trial orders that would otherwise be unreviewable. In *Breen v. Phelps*,¹⁶⁸ the trial court granted a motion to strike Count I of a two-count complaint, and later granted a summary judgment on the remaining count of the complaint. On appeal from the summary judgment, which was a final judgment, the court allowed the plaintiff to also appeal the motion to strike Count I, which was not a final judgment. *Breen* cited cases in which the Court had allowed a defendant who could not appeal from (1) a denial of his motion to strike a complaint, or (2) a grant of a motion to strike his special defense, to raise these issues on appeal from a final judgment on the merits.¹⁶⁹ *Breen* was subsequently cited in *Aetna Casualty & Surety Co. v. Jones*¹⁷⁰ as authority for an appellate court review of not only the plaintiff's

^{166.} See Chapter 3, §§ 3-1:3, 3-1:4.

^{167.} P.B. §§ 61-2 to 61-5.

^{168.} *Breen v. Phelps*, 186 Conn. 86, 90, 439 A.2d 1066 (1982).

^{169.} *Breen v. Phelps*, 186 Conn. 86, 90-91, 439 A.2d 1066 (1982); see *Nowak v. Nowak*, 175 Conn. 112, 117-22, 394 A.2d 716 (1978); *Stacker v. Waterbury*, 154 Conn. 446, 449, 226 A.2d 514 (1967); *Montanaro v. Pandolfini*, 148 Conn. 153, 157, 168 A.2d 550 (1961).

^{170.} *Aetna Casualty & Sur. Co. v. Jones*, 220 Conn. 285, 295 n.12, 596 A.2d 414 (1991); see also *CTB Realty Ventures XXII, Inc. v. Markoski*, 33 Conn. App. 388, 391 n.3, 636 A.2d 379, cert. granted but appeal withdrawn, 228 Conn. 929 (1994).

appeal from the grant of the defendant's motion for summary judgment, a final judgment, but also the denial of the plaintiff's motion for summary judgment, which was not a final judgment.

1-4 ADVISORY JURISDICTION

1-4:1 In General

Connecticut courts do not have jurisdiction to give legal advice or to answer academic or moot questions of law.¹⁷¹ For a Connecticut court to have jurisdiction to render an opinion on a point of law, there must be an “actual controversy” involving a “justiciable” issue. This requirement is more fully discussed elsewhere.¹⁷²

As a practical matter, however, appellate courts occasionally do render advisory opinions in the form of dicta, which are followed by lower courts as if they were stare decisis. For example, in *State v. Porter*,¹⁷³ two issues were before the court, first whether polygraph test results should be admitted if reliable, and second what legal standard should be adopted to determine if such results are scientifically reliable. The court first determined that the existing *Frye*¹⁷⁴ standard should be replaced by the new *Daubert*¹⁷⁵ standard, but then held that even if polygraph test results were reliable under the *Daubert* criteria the results should not be admitted for policy reasons.¹⁷⁶ Such a holding rendered the *Frye/Daubert* discussion dicta, but that dicta has been followed by all courts thereafter. For all intents and purposes, *Porter* was an advisory opinion on the appropriate test for scientific evidence.

By statute and court rule, the Superior Court has jurisdiction to render a declaratory judgment.¹⁷⁷ An action for a declaratory judgment, however, is available only to solve a “justiciable

^{171.} See § 1-2:1; Chapter 3, § 3-2:2.1.

^{172.} See Chapter 3, § 3-2:1.

^{173.} *State v. Porter*, 241 Conn. 57, 698 A.2d 739 (1997).

^{174.} *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923).

^{175.} *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 113 S. Ct. 2786 (1993).

^{176.} *State v. Porter*, 241 Conn. 57, 92-132, 698 A.2d 739 (1997); see also Prescott, Tait's Handbook of Connecticut Evidence §§ 6.23.9, 7.10.4 (6th Ed. 2019).

^{177.} Conn. Gen. Stat. § 52-29; P.B. §§ 17-54 to 17-59. The Declaratory Judgment Act is not unconstitutional as an attempt to confer non-judicial powers upon the Superior Court. *Braman v. Babcock*, 98 Conn. 549, 120 A. 150 (1923).

controversy.”¹⁷⁸ A declaratory judgment rendered by a Superior Court is a final judgment and,¹⁷⁹ as such, is reviewable by an appellate court.

The Connecticut Supreme Court does have jurisdiction to respond to questions of law in two situations, both of which involve an actual case or controversy. This jurisdiction is discussed in the following sections.

1-4:2 Reservations of Questions of Law From the Superior Court

Both the Supreme Court and the Appellate Court have jurisdiction to determine questions of law reserved for their advice upon request by the Superior Court.¹⁸⁰ The Supreme Court has jurisdiction to transfer to itself a reservation pending before the Appellate Court,¹⁸¹ but it does not have jurisdiction to review the advice rendered on the question of law by the Appellate Court.¹⁸²

This procedure is more fully discussed elsewhere.¹⁸³

1-4:3 Certification of Questions of Law to and From Other Courts

The Connecticut Supreme Court has jurisdiction to render advice on an issue of Connecticut law in response to a request from a federal court or the highest court of another state or federally recognized tribe. The Court may also certify a question of non-Connecticut law to the highest court of another state or tribe.¹⁸⁴ The Appellate Court has no such jurisdiction. This jurisdiction is more fully discussed elsewhere.¹⁸⁵

^{178.} *Liebeskind v. Waterbury*, 142 Conn. 155, 158, 112 A.2d 208 (1955); *see also* P.B. § 17-55.

^{179.} Conn. Gen. Stat. § 52-29(a).

^{180.} Conn. Gen. Stat. § 52-235(a); P.B. § 74-1.

^{181.} Conn. Gen. Stat. § 51-199; *see* § 1-3:6.

^{182.} Conn. Gen. Stat. § 51-197f; *see* § 1-3:5.

^{183.} *See* Chapter 9, § 9-2:1.

^{184.} Conn. Gen. Stat. § 51-199b.

^{185.} *See* Chapter 10, § 10-3.

1-5 OTHER JURISDICTION

1-5:1 Jurisdiction in Aid of Jurisdiction

1-5:1.1 In General

Historically, the power of Connecticut courts to issue extraordinary writs to protect their jurisdiction has been ill-defined in statute and case law. A brief review of how the federal courts deal with this matter sheds some light on the situation in Connecticut state courts.

Under the federal All Writs Act, the U.S. Supreme Court and other federal courts are empowered to:

Issue all writs necessary and appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.¹⁸⁶

The U.S. Supreme Court has issued writs under this act to protect its jurisdiction in the following ways: (1) to prevent another court from interfering with a case pending before the court; (2) to enforce the court's mandate; and (3) to order a lower court to perform its duties to prepare a case for appellate review by the court, even though the case is not yet formally before the court. The writs most frequently used in these situations are prohibition and mandamus. In other appropriate circumstances, the court has also used such procedures as injunctions and stays, writs of certiorari, habeas corpus and ne exeat. The use of these writs is authorized "in aid" of jurisdiction, that is, to protect jurisdiction otherwise granted, not to grant or enlarge the court's jurisdiction.

1-5:1.2 Appellate Court

The statute granting jurisdiction to the Appellate Court authorizes the court "to issue all writs necessary or appropriate in aid of its jurisdiction and agreeable to the usages and principles of law."¹⁸⁷ This language was borrowed verbatim from the federal All Writs Act.¹⁸⁸ The powers of the Appellate Court under this provision vary from those of federal courts because the

^{186.} 28 U.S.C. § 1651 (1982).

^{187.} Conn. Gen. Stat. § 51-197a(b).

^{188.} 28 U.S.C. § 1651 (1982).

usages and principles of law “agreeable” to federal law are not necessarily agreeable to Connecticut law. Moreover, both state and federal provisions authorize writs only “in aid of” or to protect existing jurisdiction, and neither grant additional jurisdiction. Thus, the Appellate Court’s subject matter jurisdiction remains exclusively appellate.

The types of writs available in Connecticut appear more limited than in federal court because Connecticut has never recognized the writ of certiorari¹⁸⁹ and has abolished the writ of prohibition.¹⁹⁰ The writs currently available in Connecticut include mandamus,¹⁹¹ habeas corpus,¹⁹² ne exeat¹⁹³ and injunction.¹⁹⁴ These writs should give the Appellate Court ample power to protect its jurisdiction to the same extent as a federal court.

This power to issue writs “in aid” of jurisdiction, however, restricts their use to prohibiting a lower court from exercising jurisdiction rightly belonging to the Appellate Court, or to mandating that a lower court take action necessary to the Appellate Court’s appellate jurisdiction. Such power does not give the court jurisdiction to “review” the merits of the lower court’s decision absent a formal appeal.

1-5:1.3 Supreme Court

Until recently, the Supreme Court was without statutory authorization to issue any writs necessary to protect its jurisdiction. In 2003, the legislature statutorily authorized the Supreme Court to issue such writs.¹⁹⁵ The language of the statute is the same as the federal All Writs Act and the earlier statute giving such authority

¹⁸⁹ *Williams v. Hartford & New Haven R.R.*, 13 Conn. 110, 118 (1839).

¹⁹⁰ Conn. Gen. Stat. § 52-490, repealed by 1976 Conn. Pub. Acts 76-436, §§ 154, 681. The writ of prohibition was a creature of statute in Connecticut, not common law. *Sherwood v. New Eng. Knitting Co.*, 68 Conn. 543, 547-48, 37 A. 388 (1897); see also 1 Swift, A System of the Laws of the State of Connecticut 97-98 (1795); 1 Swift, Digest of the Laws of the State of Connecticut 565-67 (1822).

¹⁹¹ Conn. Gen. Stat. §§ 52-485 to 52-488.

¹⁹² Conn. Gen. Stat. §§ 52-466 to 52-470.

¹⁹³ Conn. Gen. Stat. § 52-489.

¹⁹⁴ Conn. Gen. Stat. §§ 52-471 to 52-483.

¹⁹⁵ Conn. Pub. Acts 03-176, codified at Conn. Gen. Stat. § 51-199(d).

to the Appellate Court.¹⁹⁶ In the absence of the statute, the court's authority to issue writs "in aid" of its jurisdiction is unclear.

The clearest statement on the court's power to issue writs appears in the 1907 decision in *Application of Ansonia Water Co.*¹⁹⁷ In that case, the applicant sought a writ of mandamus to direct the Superior Court to enter judgment upon the denial of the applicant's motion for disclosure in order to take an appeal. In denying the writ, the court stated:

Since the organization of this court the use of mandamus as an appropriate procedure for the exercise of its jurisdiction has never been sanctioned by any practice or custom. The statutes regulating procedure do not purport to authorize the court to issue writs of mandamus in the exercise of original jurisdiction, nor to use mandamus as appropriate process for an exercise of appellate jurisdiction. It is useless, therefore, to inquire whether or not it may be practicable for the legislature, in view of the nature of the jurisdiction vested in this court, to utilize the action of mandamus for the purpose of invoking and enforcing that jurisdiction. It is sufficient for the disposition of this case, that this court is not authorized, either by custom or statute, to issue the writ asked for in the application.¹⁹⁸

The language quoted above can only be read to hold that the court does not have a common law or inherent power to issue extraordinary writs in the exercise of its original or appellate jurisdiction. This is consistent, with the court's position that it has no original jurisdiction except by statute.¹⁹⁹

In 1970, however, the court came to a different conclusion. In *Tough v. Ives*, the trial judge refused to grant or deny the defendant's motion to set aside the verdict.²⁰⁰ Frustrated by the judge's failure

^{196.} See 28 U.S.C. § 1651; Conn. Gen. Stat. § 51-197a(b).

^{197.} *Application of Ansonia Water Co.*, 80 Conn. 326, 68 A. 378 (1907); see also *Huggins v. Mulvey*, 160 Conn. 559, 560, 280 A.2d 364 (1971).

^{198.} *Application of Ansonia Water Co.*, 80 Conn. 326, 327, 68 A. 378 (1907).

^{199.} *Winchester Repeating Arms Co. v. Radcliffe*, 134 Conn. 164, 170, 56 A.2d 1 (1947); see § 1-2:1.

^{200.} *Tough v. Ives*, 159 Conn. 605, 268 A.2d 371 (1970).

to issue an appealable final judgment, the defendant moved the Supreme Court to order the trial judge to render judgment on the verdict or to set aside the verdict. The Supreme Court granted the motion without discussing or citing the *Ansonia Water Company* case. Instead, the court relied on two practice rules that authorized the court to make orders necessary to complete or perfect the record “on appeal.”²⁰¹ A reading of these rules indicates they were intended to apply to the record *on appeal*, and that neither rule, as then written, purported to apply to matters not yet on appeal.²⁰² Moreover, in support of its application of these post-appeal rules to a preappeal case, the court cited only a post-appeal case in which these rules were properly invoked.²⁰³

Perhaps in recognition of the lack of authority for its order in *Tough*, the court thereafter amended the rule on supervision of “proceedings on appeal,” extending it from the “time the appeal is filed” by adding the phrase “or earlier, if appropriate.”²⁰⁴ Thus, the current rule purports to grant the court jurisdiction to act before an appeal is filed but fails to tie such power to protecting the court’s jurisdiction. Such an unlimited assumption of jurisdiction by court rule appears unconstitutional in light of the court’s limited original and appellate jurisdiction.²⁰⁵

Subsequent to its decision in *Tough*, the court in *Huggins v. Mulvey*²⁰⁶ was faced with a petition for a writ of mandamus and/or a writ of prohibition. The court denied the writ of mandamus, citing *Ansonia Water Company*,²⁰⁷ and denied the writ of prohibition because an appeal was an adequate remedy.²⁰⁸ Because the court denied the writ of prohibition on the merits and not on jurisdictional grounds, *Huggins* might be viewed as

²⁰¹ *Tough v. Ives*, 159 Conn. 605, 607, 268 A.2d 371 (1970).

²⁰² P.B. §§ 692, 694 (1963) [now §§ 60-2, 66-6]; see *State v. Palmieri*, 143 Conn. 569, 570-71, 124 A.2d 911 (1956); *Davis v. P. Gambardella & Son Cheese Corp.*, 147 Conn. 365, 367-68 n.1, 161 A.2d 583 (1960).

²⁰³ *Tough v. Ives*, 159 Conn. 605, 607, 268 A.2d 371 (1970) (citing *State v. Palmieri*, 143 Conn. 569, 570-71, 124 A.2d 911 (1956)).

²⁰⁴ P.B. § 60-2, amended July 1, 1978. Section 60-2 was amended in 2017 to clarify that its supervision relates to all appellate proceedings, not just those cases that are “on appeal.” See § 1-5:3.1

²⁰⁵ See § 1-5:3.1; Chapter 3, § 3-1:4.2.

²⁰⁶ *Huggins v. Mulvey*, 160 Conn. 559, 280 A.2d 364 (1971).

²⁰⁷ *Huggins v. Mulvey*, 160 Conn. 559, 560, 280 A.2d 364 (1971).

²⁰⁸ *Huggins v. Mulvey*, 160 Conn. 559, 561, 280 A.2d 364 (1971).

a tacit acknowledgment of the court's jurisdiction to hear such a writ. Such a view seems unwarranted because the court made no attempt to reconcile its holdings; that is, why it did not have jurisdiction to hear a writ of mandamus but did have jurisdiction to hear a writ of prohibition.²⁰⁹

The Supreme Court should have jurisdiction to protect its jurisdiction, an authority that would include the pre-appeal power to compel the trial court to perform the duties necessary for an appeal or to overrule actions of the trial court that impede an appeal. In Connecticut, such inherent jurisdiction is grounded in the constitutional foundations of the Supreme Court's jurisdiction.²¹⁰ As the state's constitutionally delineated court of last resort, the Supreme Court must be able to protect its jurisdiction, or the constitutionally authorized review of cases could be thwarted by a lower court. To the extent that *Ansonia Water Company* renounces such inherent jurisdiction, it should be reconsidered.

The Court asserted its inherent power to act to protect its appellate jurisdiction under its supervisory power in a case in which it reviewed a trial court's denial of permission to appeal.²¹¹ Such a use of the Court's supervisory power is appropriate, although it should be noted that the rule granting the Court supervisory powers over pre-appeal matters is not restricted on its face to protecting the court's jurisdiction.²¹² Although the phrase "if appropriate" might be construed in such a fashion, the Court's power to protect its jurisdiction should be expressly recognized. Such a power could be made explicit by an amendment to the rule on the Court's supervisory power.

The statutory or inherent power to act in aid of its own jurisdiction, however, does not give the Supreme Court the authority to issue writs or orders in aid of another court's jurisdiction. Connecticut has three constitutional courts, and as such each should have the inherent power to act in aid of its own jurisdiction, with or without

²⁰⁹. The statute that authorized a writ of prohibition was repealed five years after the decision in *Huggins*; see § 1-5:2.

²¹⁰. See *State v. Clemente*, 166 Conn. 501, 353 A.2d 723 (1974); *Styles v. Tyler*, 64 Conn. 432, 445-48, 30 A. 165 (1894).

²¹¹. *State v. S & R Sanitation Servs., Inc.*, 202 Conn. 300, 310, 521 A.2d 1017 (1987); see § 1-5:3.1.

²¹². P.B. § 60-2; see Chapter 3, § 3-1:4.1.

a statute to that effect. Similarly, none of these courts should have the power to issue an original writ or direct order in aid of another court's jurisdictional prerogatives. Nor can the Supreme Court give itself jurisdiction to do so by way of its rule-making powers, such as its rule on supervision.²¹³

1-5:2 Extraordinary or Prerogative Writs

1-5:2.1 Writ of Error

Supreme Court review of Superior Court decisions by way of writ of error is recognized by statute and authorized by rule.²¹⁴ The rule restricts its use to cases in which the error sought to be reviewed could not have been reviewed by way of an appeal.²¹⁵ This writ is discussed more fully elsewhere.²¹⁶

1-5:2.2 Writ of Mandamus

The writ of mandamus is a prerogative writ used by a higher court to order a lower court to do something in aid of the higher court's jurisdiction. The writ prevents a lower court from blocking or impairing the higher court's exercise of the higher court's jurisdiction. For example, if a lower court refuses to enter a final judgment, or to perform another duty-bound act, a writ of mandamus would lie.²¹⁷

Prior to 2003, the Supreme Court had no statutory authority to issue writs in aid of its jurisdiction, even though the Appellate Court had such authority.²¹⁸ In 2003, the legislature similarly authorized the Supreme Court to issue "all necessary writs in aid" of its jurisdiction.²¹⁹ This act reauthorized the Court's statutory authority to issue writs of prohibition, a power that it may very well have had under its non-statutory inherent powers.²²⁰

²¹³. See § 1-5:3.

²¹⁴. See Conn. Gen. Stat. §§ 51-199(b)(10), 52-264; P.B. § 72-1.

²¹⁵. P.B. § 72-1(b).

²¹⁶. See Chapter 9, § 9-1.

²¹⁷. See *Tough v. Ives*, 159 Conn. 605, 607, 268 A.2d 371 (1970).

²¹⁸. Conn. Gen. Stat. § 51-197a(b).

²¹⁹. Conn. Gen. Stat. § 51-199(d).

²²⁰. See § 1-5:3.1.

1-5:2.3 Writ of Prohibition

The writ of prohibition is a prerogative writ used by a higher court to enjoin a lower court from exercising jurisdiction that it is not authorized to exercise, or that invades the jurisdiction of the higher court. In 2003, the legislature statutorily authorized the Supreme Court to issue all necessary writs in aid of its jurisdiction.²²¹

1-5:2.4 Writ of Certiorari

The writ of certiorari is a prerogative writ used by a higher court to review the merits of a decision by a lower court. This writ has never been recognized in Connecticut and the “All Writs Act” should not be interpreted to create or authorize such a writ in Connecticut practice, nor is such a writ necessary in light of the appeal and certification procedures now in practice.

1-5:2.5 All Writs Act

The Supreme Court and the Appellate Court each have statutory authority to issue “all writs necessary and appropriate in aid of [their] jurisdiction and agreeable to the usages and principles of law.”²²² Connecticut’s All Writs Acts are modeled on the federal All Writs Act.²²³

The principal writs authorized by these statutes are writs of mandamus and prohibition, both discussed above. The writ of certiorari was never part of Connecticut’s common law, and therefore is not an “agreeable” writ under these statutes.

These “jurisdictional” writs are “extraordinary” writs, both in theory and practice, and should be reserved for truly extraordinary situations. They are not a matter of right, but a matter of judicial discretion, which should be rarely exercised. To justify the granting of such a writ, the petition must indicate that: (1) the writ will be in aid of the court’s appellate jurisdiction; (2) the lower court has violated a clear legal duty; (3) exceptional circumstances warrant the exercise of the court’s discretionary powers; and (4) adequate relief cannot be obtained in any other

²²¹. See § 1-5:3.1.

²²². Conn. Gen. Stat. §§ 51-199(d), 51-197a(b).

²²³. 28 U.S.C. § 1651.

forum or from any other court. The writs are not a substitute for an appeal or writ of error. Indiscriminate resort to these writs will undoubtedly provoke judicial condemnation, which may include appropriate sanctions.

1-5:3 Supreme Court Rules

1-5:3.1 Supervision of Proceedings on Appeal

The appellate courts, by rule, purport to have supervisory powers over appellate matters from the time the matter is filed, “or earlier, if appropriate.”²²⁴ The rule was amended in 2017 to clarify that it applied to all appellate matters, which would include petitions for review and other similar appellate proceedings that do not technically qualify as appeals. Although there is a firm constitutional and statutory basis for supervisory power over appellate matters that have been filed, there is no such basis for matters that are not pending in the appellate courts. That lack of jurisdiction, however, has been cured to a large extent by legislation enacted in 2003 that gave the Supreme Court authority to issue “all necessary writs in aid of its jurisdiction.”²²⁵ The Appellate Court was granted such authority when it was first created.

The All Writs Act, however, is limited to issues affecting the appellate courts’ jurisdiction. It does not authorize the courts to delve into procedural or substantive matters pending before a lower court that do not implicate the appellate court’s jurisdiction.

The power to delve into trial proceedings before an appeal is filed raises jurisdictional issues. The right to appeal is purely statutory and no appeal can be taken until there is a final judgment. Thus, without both a final judgment and the filing of an appropriate appellate matter, no appellate jurisdiction exists.²²⁶ To the extent that the rule authorizes the court to exercise supervisory control over trial judges in aid of its own jurisdiction, the rule is theoretically sound. For example, the Court, in a mandamus-like order, has directed a trial judge to perform an act he was duty bound to perform, that is, to decide a motion to set aside a verdict

²²⁴ P.B. § 60-2.

²²⁵ Conn. Gen. Stat. §§ 51-197a (b), 51-199 (d).

²²⁶ See Chapter 3, § 3-1:1.1.

so as to have entered an appealable final judgment.²²⁷ In another case, the Court expressly asserted its supervisory power to review a denial of permission to appeal because the trial court's action endangered the Supreme Court's "jurisdiction to hear appeals."²²⁸

To the extent that the rule purports to authorize appellate courts to exercise *adjudicative* control over trial judges before an appellate matter is filed, that is, to review decisions of a trial judge that do not implicate the court's jurisdiction, the rule runs into jurisdictional barriers. The jurisdictional necessity for a final judgment and an appellate matter cannot be sidestepped by adopting a rule authorizing the court to supervise procedure. The court itself has expressly recognized the limitation that the appellate rules "regulate, but do not create, appeals."²²⁹

The present language of the supervisory rule, insofar as it grants an appellate court jurisdiction over pre-appeal matters "if appropriate," is ambiguous and subject to misunderstanding. The court may properly invoke its supervisory power over pre-appeal matters only to protect its own jurisdiction,²³⁰ and the rule should be amended to make that restriction explicit.

Although the court has not renounced its supervisory powers over appellate matters not yet pending, it has emphatically stated:

They [our supervisory powers] are an extraordinary remedy to be invoked only when the circumstances are such that the issue at hand, while not arising to the level of a constitutional violation, is nonetheless of utmost seriousness, not only for the integrity of a particular trial but also for the perceived fairness of the judicial system as a whole.²³¹

In criminal cases, the court's supervisory powers serve a "narrow purpose," primarily to provide "additional procedural safeguards

²²⁷. See *Tough v. Ives*, 159 Conn. 605, 607, 268 A.2d 371 (1970), discussed in § 1-5:1.3; see also *La Buy v. Howes Leather Co.*, 352 U.S. 249, 260-69, 77 S. Ct. 309 (1957) (Brennan, J., dissenting) (arguing that use of supervisory mandamus amounts to an interlocutory appeal).

²²⁸. *State v. S & R Sanitation Servs., Inc.*, 202 Conn. 300, 310, 521 A.2d 1017 (1987).

²²⁹. *State v. Audet*, 170 Conn. 337, 343, 365 A.2d 1082 (1976); see also *Lo Sacco v. Young*, 210 Conn. 503, 508, 555 A.2d 986 (1989) (rules not jurisdictional); *Ethells v. Wainwright*, 76 Conn. 534, 538, 57 A. 121 (1904) (express statutory authority required).

²³⁰. See § 1-5:1.3.

²³¹. *State v. Hines*, 243 Conn. 796, 815, 709 A.2d 522 (1998).

for some salient aspect of the right to a trial before an impartial jury.”²³² These powers will be invoked only in “rare instances” in which constitutional, statutory and procedural limitations are inadequate to ensure the “fair and just administration of the courts.”²³³

If those are the confines of the supervisory power in criminal cases, in which life and liberty are at stake, the confines in civil cases should be even narrower.

1-5:3.2 Motion for Review

Before September 3, 1996, the rule authorizing a motion for review provided in pertinent part that:

The court may, on written motion for review stating the grounds for the relief sought, modify or vacate any order made by the trial court under Sec. 4040(a) [now 66-1(a)] or any action by the appellate clerk under Sec. 4040(c)(2) [now 66-1(c)(2)] or any order relating to the perfecting of the record for the appeal, or the procedure of prosecuting or defending against the appeal or any order made by the trial court concerning a stay of execution on appeal.²³⁴

The Court interpreted the use of the definitive article “the” to mean that the rule pertained only to matters on appeal, and not to pre-appeal matters.²³⁵

To remedy that construction, and to make the rule applicable to pre-appeal matters, the rule was amended in 1996 to change the definite article “the” to the indefinite article “an.” Although this grammatical change accomplishes that purpose, the new language now expressly grants the Supreme Court subject matter jurisdiction over matters that it did not have jurisdiction over before the rule change. This conscious arrogation of jurisdiction by rule flies in the face of both statutory authority²³⁶ and the Supreme Court’s

²³² *State v. Hines*, 243 Conn. 796, 815, 709 A.2d 522 (1998).

²³³ *State v. Hines*, 243 Conn. 796, 815, 709 A.2d 522 (1998).

²³⁴ P.B. § 4053 (1995) [now § 66-6] (emphasis added).

²³⁵ *Simms v. Warden (I)*, 229 Conn. 178, 186 n.13, 640 A.2d 601 (1994).

²³⁶ Conn. Gen. Stat. § 51-14.

consistent position that “[p]rovisions of the Practice Book cannot confer jurisdiction on this court.”²³⁷

One example in which the rule provides for review of orders made by the trial court judge before filing an appeal is a trial court order relating to extensions of time within which to appeal.²³⁸ The jurisdictional basis for this pre-appeal review of a trial court order is unclear.²³⁹ Although a trial court may, even without statutory authorization, have an implied power to grant an extension of time in some circumstances,²⁴⁰ no appellate court has any implied power to review a trial court decision or order in the absence of statutory or constitutional authorization.²⁴¹ As the Supreme Court repeatedly has stated, the appellate rules “regulate, but do not create, appeals.”²⁴² Pre-appeal motions for review are de facto appeals, and labeling the review process a motion rather than an appeal “will no more change its essential character than calling a bull a cow will change its gender.”²⁴³

Assuming that trial decisions on motions for extension of time are final judgments, they would seem reviewable only by appeal. The court, however, has dismissed an appeal taken from a denial of a motion to extend the time to appeal on the ground that a motion for review is a “more expeditious and less expensive” procedure.²⁴⁴ That may be so, but speed and cost are not at issue. If a ruling on a motion to extend is a final judgment, then an appeal is the proper and exclusive way to review the order.²⁴⁵ If a trial order relating to an extension of time is not a final judgment, it is not reviewable by either appeal or by motion for review.

²³⁷ *Simms v. Warden (I)*, 229 Conn. 178, 184, 640 A.2d 601 (1994).

²³⁸ P.B. § 66-1(c)(5). As a practical matter, many time limitations to appeal that are set by statute may be jurisdictional in nature and therefore cannot be extended by either the trial court or the appellate courts. See Chapter 4, § 4-2:1.

²³⁹ A similar question can be raised about review of trial orders on waiver of fees; see Chapter 4, § 4-3:3.3.

²⁴⁰ See Chapter 4, § 4-2:5.1.

²⁴¹ *Etchells v. Wainwright*, 76 Conn. 534, 538, 57 A. 121 (1904); see § 1-5:3.1.

²⁴² See, e.g., *State v. Audet*, 170 Conn. 337, 343, 365 A.2d 1082 (1976); *State v. Bellamy*, 4 Conn. App. 520, 522 n.1, 495 A.2d 724 (1985).

²⁴³ *State v. Gooch*, 186 Conn. 17, 18, 438 A.2d 867 (1982).

²⁴⁴ *State v. Stead*, 186 Conn. 222, 226-27, 229, 440 A.2d 299 (1982). *Stead* fails to discuss or cite *State v. Audet*, 170 Conn. 337, 365 A.2d 1082 (1976).

²⁴⁵ Cf. *Islamic Republic of Iran v. Boeing Co.*, 771 F.2d 1279 (9th Cir. 1985), cert. dismissed, 479 U.S. 957 (1986).

The only arguable jurisdictional basis for appellate court intervention in pre-appeal matters, such as an extension of time to appeal, lies within its power to act in aid of its own jurisdiction.²⁴⁶ A motion for extension of time to appeal, however, does not implicate an appellate court's jurisdiction because, as a final judgment, the party is free to challenge a denial of a motion for extension of time by direct appeal. As a result, no writ of mandamus or prohibition aimed at the lower court is necessary to unblock the party's access to the appellate courts.

The motion for review is a less costly and less time-consuming method of review than an ordinary appeal. As such, the parties, and the court, have utilized it for the expeditious review of procedural matters prefatory to an appeal, such as extensions of time within which to appeal,²⁴⁷ waiver of fees and costs on appeal,²⁴⁸ and denials of permission to appeal.²⁴⁹ This has led to the use of the motion in situations in which an appeal is the only legitimate avenue of review. If an ordinary appeal is too costly or cumbersome for the review of such matters, the solution is not to stretch the motion to cover matters beyond its reach, but to tailor the appeal process to the matter at hand, or to review such matters under the court's supervisory power where the court's jurisdiction is implicated. For a legitimate mini-appeal process, compare the simplified and expedited petition for review process.²⁵⁰

1-5:3.3 Suspension of the Rules

The appellate rules provide that:

In the interest of expediting decision, or for other good cause shown, the court in which the appellate matter is pending may suspend the requirements or provisions of any of these rules on a motion of a party or on its own motion and may order proceedings in accordance with its direction.²⁵¹

^{246.} See § 1-5:1.3; see also Chapter 4, § 4-2:8.

^{247.} See Chapter 6, § 6-2:5.2.

^{248.} See Chapter 6, § 6-2:5.3.

^{249.} See Chapter 2, § 2-1:4.4.

^{250.} See § 1-3:5; see also *State v. Ayala*, 222 Conn. 331, 340, 610 A.2d 1162 (1992).

^{251.} P.B. § 60-3.

This rule is non-jurisdictional in nature. It authorizes the suspension of the appellate rules; it does not, and could not, authorize suspension of the statutory jurisdictional requirements of a final judgment and an appeal or other lawful appellate proceedings.²⁵²

1-6 ROLES OF THE SUPREME AND APPELLATE COURTS

1-6:1 Roles of the Supreme and Appellate Courts

The Supreme Court retains complete control over its own appellate docket and virtually all of the Appellate Court's docket through its power to grant or deny certification of decisions of the Appellate Court, and to transfer pending appeals between the Appellate Court and the Supreme Court. Thus, all appeals could be finally heard by the Supreme Court.

Although in theory an appeal could be heard at both appellate levels, Connecticut's appellate court framework is intended to provide most parties with one appeal, the only question being whether it should be heard by the Supreme Court or the Appellate Court.²⁵³ As stated by Chief Justice Peters, appellate cases should be tracked:

to determine those which are of primary importance to the parties and hence belong with the Appellate Court and those which are of greater importance for the development of the law and hence belong in the Supreme Court.²⁵⁴

These two roles are sometimes referred to as “error correcting” and “law making,” the former belonging to the intermediate appellate court and the latter to the highest appellate court.²⁵⁵ Only time will tell whether the two courts will confine themselves to these

²⁵². *State v. Audet*, 170 Conn. 337, 365 A.2d 1082 (1976); *Echells v. Wainwright*, 76 Conn. 534, 538, 57 A. 121 (1904).

²⁵³. 26 Conn. H.R. Proc., Pt 31, 1983 Spec. Sess., p. 1397 (Introductory Remarks by Rep. R. Tulisano); Conn. Joint Standing Committee on the Judiciary, 1983, Pt. 5, p. 1539 (Testimony of Chief Justice J. Speziale).

²⁵⁴. Address by Chief Justice Ellen Ash Peters to the Connecticut Bar Association, 1985 Annual Meeting, reported in 11 Conn. L. Trib. No. 22, June 3, 1985, at 1.

²⁵⁵. Hon. Richard S. Brown, *Allocation of Cases in a Two-Tiered Appellate Court Structure: The Wisconsin Experience and Beyond*, 68 Marquette L. Rev. 189 (1985);

respective roles, but if the state and its litigants are to fully benefit from the advantages of a two-tiered appellate court system, each court should be mindful of its role and depart from it consciously and only for good reason.

The Supreme Court should become involved in error correcting only to prevent manifest injustice to a party or to reaffirm established principles of substantive or procedural law undermined by a lower court.²⁵⁶ The Appellate Court, however, can play a useful role in law development. If Supreme Court precedents are unclear or unsettled, the Appellate Court should contribute to the legal dialogue and assist in the ultimate resolution by the Supreme Court. Thus, if the precedents are conflicting, the Appellate Court should resolve the conflict using its own best judgment.²⁵⁷ If a novel issue of law has been left to the Appellate Court, it should decide the issue based on its own best judgment and not attempt to read the minds of the Supreme Court justices.²⁵⁸ If the precedents are vague or not controlling, the Appellate Court should adapt the precedents to the case at hand.²⁵⁹ If the Supreme Court precedents are clear, however, the Appellate Court should follow orders even though the precedents seem obsolete or ill advised under existing social or economic conditions.²⁶⁰ Even in this circumstance, the Appellate Court should respectfully give the Supreme Court the benefit of its considered judgment.

In return, the Supreme Court owes the Appellate Court respect, both in taking certification only if necessary and in reversing the Appellate Court only with a reasoned opinion meeting the issues addressed by that court. Such respect is essential if the Appellate Court is to maintain its place as the court of last resort for the great

Benjamin Kaplan, *Do Intermediate Appellate Courts Have a Law-Making Function?*, 70 Mass. L. Rev. 10 (1985).

^{256.} See P.B. §§ 84-2(1), (3), (4); see also *Grayson v. Grayson*, 202 Conn. 221, 223-24, 520 A.2d 225 (1987) (appeal dismissed because Appellate Court applied the correct standard). *But see State v. Geisler*, 220 Conn. 918, 597 A.2d 342 (1991).

^{257.} See *Plawecki v. Angelo Tomasso, Inc.*, 1 Conn. App. 48, 467 A.2d 944 (1983).

^{258.} See *Gennarini v. Gennarini*, 2 Conn. App. 132, 477 A.2d 674 (1984).

^{259.} See *Petrowski v. Norwich Free Academy*, 2 Conn. App. 551, 481 A.2d 1096 (1984), *rev'd on appeal*, 199 Conn. 231 (1986).

^{260.} See *O'Connor v. O'Connor*, 4 Conn. App. 19, 20, 492 A.2d 207 (1985), *rev'd*, 201 Conn. 632 (1986); *State v. Devanney*, 12 Conn. App. 288, 292, 530 A.2d 650 (1987); *State v. Wilson*, 17 Conn. App. 97, 98-99, 550 A.2d 21 (1988).

majority of cases.²⁶¹ To further enhance the status of the Appellate Court, the Supreme Court should cite Appellate Court opinions as cogent authority in its own opinions.²⁶²

1-6:2 Rules of Evidence and the Connecticut Code of Evidence

In 2008, the Connecticut Supreme Court in *State v. DeJesus* held that Superior Court judges had no constitutional authority to promulgate rules of evidence that were binding on the Supreme Court.²⁶³ Accordingly, the Connecticut Code of Evidence, which was adopted by the Superior Court judges, was not controlling on the Supreme Court, and the dispositive evidentiary rules were only those pronounced by the Supreme Court under its common law adjudicative powers.

Although the *DeJesus* opinion pertained only to the applicability of the Code of Evidence to the Supreme Court, its reasoning seemed crystal clear that the Appellate Court, being a constitutional court with sovereignty and powers comparable to the Supreme Court, was similarly freed from the confines of a code adopted by the judges of the Superior Court.

In 2014, General Statutes § 51-41a became law. This provision authorized the Supreme Court to adopt a Code of Evidence binding on lower courts but also preserving the Supreme Court's power to develop the law of evidence through its adjudicative function. The Supreme Court subsequently adopted the Code of Evidence that had previously been adopted by the judges of the Superior Court, as amended by those judges from time to time. These developments vitiated many of the institutional and constitutional concerns caused by the Supreme Court's decision in *DeJesus*. A full discussion of this topic can be found in E. Prescott, Tait's Handbook of Evidence, § 1.1 (6th Ed. 2019).

²⁶¹. Testimony of Chief Justice J. Speziale, Conn. Joint Standing Committee on the Judiciary, 1983, PL 5, p. 1539.

²⁶². See *State v. McClary*, 207 Conn. 233, 245, 541 A.2d 96 (1988); see also Horton and Davis, Connecticut Appellate Review, 1984-85 Court Year, 60 Conn. B.J. 3, 6 (1986).

²⁶³. *State v. DeJesus*, 288 Conn. 418, 953 A.2d 45 (2008).

1-7 JURISDICTIONAL ISSUES

1-7:1 Subject Matter Jurisdiction

An appellate court cannot hear a case unless it has subject matter jurisdiction. Subject matter jurisdiction of an appeals court may be divided into five categories: (1) the competency of the court to hear a matter pursuant to a constitutional or legislative grant;²⁶⁴ (2) the right of the appellant to obtain review;²⁶⁵ (3) the final judgment rule;²⁶⁶ (4) aggrievement;²⁶⁷ and (5) justiciability.²⁶⁸ The competency of the Connecticut appellate courts is discussed in Chapter 1. Other jurisdictional issues are discussed in Chapters 2 and 3.

Subject matter jurisdiction cannot be waived.²⁶⁹ It may be raised at any time,²⁷⁰ including on appeal.²⁷¹ It may be raised by a party or by the court on its own motion.²⁷² Although a formal motion is preferable,²⁷³ informal notice to the court is sufficient.²⁷⁴

A case on appeal also remains on the docket of the trial court until the appeal is concluded.²⁷⁵ Thus, the trial court retains jurisdiction to hear motions addressed to the trial record or its judgment notwithstanding an appeal from its judgment, or from a subsequent post-judgment motion.²⁷⁶

^{264.} See §§ 1-2 to 1-5.

^{265.} See Chapter 2, § 2-1.

^{266.} See Chapter 3, § 3-1.

^{267.} See Chapter 2, § 2-2.

^{268.} See Chapter 3, § 3-2.

^{269.} See, e.g., *Monroe v. Monroe*, 177 Conn. 173, 177, 413 A.2d 819, *appeal dismissed*, 444 U.S. 801 (1979); see Chapter 8, § 8-2:2.2.

^{270.} P.B. §§ 10-33, 66-8.

^{271.} *Monroe v. Monroe*, 177 Conn. 173, 177, 413 A.2d 819, *appeal dismissed*, 444 U.S. 801 (1979); see P.B. § 66-8.

^{272.} P.B. §§ 10-33, 66-8; see *Kulmacz v. Kulmacz*, 177 Conn. 410, 412, 418 A.2d 76 (1979).

^{273.} See P.B. § 66-8, discussed at Chapter 6, § 6-2:8.

^{274.} *Carten v. Carten*, 153 Conn. 603, 610, 219 A.2d 711 (1966); see P.B. § 10-33 (“suggestion”).

^{275.} P.B. § 62-4.

^{276.} *O’Bymachow v. O’Bymachow*, 10 Conn. App. 76, 77-78, 521 A.2d 599 (1987); *RAL Mgmt., Inc. v. Valley View Assocs.*, 278 Conn. 672, 899 A.2d 586 (2006).

1-7:2 Personal Jurisdiction

Subject to a few exceptions, Connecticut appellate courts have no original jurisdiction.²⁷⁷ Thus, the issue of personal or territorial jurisdiction over the parties must be challenged at the trial level or it is waived.²⁷⁸ If the issue of personal jurisdiction has been properly raised and preserved at the trial level, the parties may, without waiver, litigate the merits of the case and raise both the jurisdictional issue and the merits on appeal.²⁷⁹ In the few instances in which an appellate court does have original jurisdiction,²⁸⁰ objections to personal jurisdiction, if applicable, must be presented to the appeals court at the outset to avoid waiver.²⁸¹

^{277.} *Winchester Repeating Arms Co. v. Radcliffe*, 134 Conn. 164, 170, 56 A.2d 1 (1947); see § 1-2:2.

^{278.} P.B. §§ 10-30, 10-31, 10-32; see E. Stephenson, Connecticut Civil Procedure, § 35 (2d Ed. 1970, 1971).

^{279.} *Fitzsimmons v. International Ass'n of Machinists*, 125 Conn. 490, 494, 7 A.2d 448 (1939); *Receivers of Middlesex Banking Co. v. Realty Inv. Co.*, 104 Conn. 206, 213, 132 A. 390 (1926); *Coyne v. Plume*, 90 Conn. 293, 297, 97 A. 337 (1916). *But see In re Baby Girl B.*, 224 Conn. 263, 292, 618 A.2d 1 (1992). For a better view, see Justice Borden's dissent in *In re Baby Girl B.*, 224 Conn. 263, 303, 618 A.2d 1 (1992).

^{280.} See § 1-2:2.

^{281.} See P.B. § 10-32.

